

SUBJECT: Creating state jails and transfer facilities; community corrections

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Hightower, Granoff, Gray, Hamric, Longoria, Place, Telford
0 nays
4 absent — Delco, Conley, Dear, S. Turner

SENATE VOTE: On final passage, April 22 — 29-0

WITNESSES: For — Jim Allison, County Judges and Commissioners Association of Texas; Sabrina Foster, for mayor and City of Houston
Against — None
On — Dimitria Pope, Texas Department of Criminal Justice - Community Justice Assistance Division; David McNutt, Bill McCray, TDCJ; Andy Collins, TDCJ-Institutional Division

BACKGROUND: The Texas Department of Criminal Justice (TDCJ) has three divisions: the institutional division (prisons), the community justice assistance division (probation) and the pardons and parole division (parole and mandatory supervision).

The final settlement of the *Ruiz v. Estelle* lawsuit, approved by U.S. District Judge William Wayne Justice in December 1992, ended federal court supervision of state prison management. The final settlement included agreements on the maximum population of TDCJ units and agreements to meet other requirements such as staffing, space requirements and medical care.

Currently, TDCJ prisons hold about 59,000 inmates. About 19,800 others inmates are in county jails awaiting transfer to state facilities. By the end of fiscal 1993, prison operational capacity is projected to be 63,030.

County jail overcrowding. In response to rulings in several state-court lawsuits seeking to force the state to accept its prisoners or reimburse the counties for housing them, the 72nd Legislature, in its second called session, enacted HB 93 by Hightower and Stiles, which designated \$113.4 million in fiscal 1992-93 for payments to counties for housing state prisoners. The bill set up a payment standard for emergency overcrowding relief for the counties through fiscal 1993 and a standard for fiscal 1994-1995. The state acknowledged that, as of September 1, 1995, it had a duty to accept state inmates from county jails. By mid-April counties had received \$158.7 million in overcrowding payments and other payments authorized by HB 93.

(For more background on the settlement funded by HB 93 see *Summary of 1991 Special Session Legislation*, House Research Organization. Special Legislative Report Number 173, October 24, 1991.)

The *Alberti* order. In September 1992 U.S. District Judge James DeAnda issued a final order in the *Alberti v. the Sheriff of Harris County* lawsuit, filed in 1972 over conditions in the Harris County Jail, in which the state became a defendant in 1989. The final order capped the Harris County Jail population at 9,800 and ordered that, starting March 31, 1993, the state would be subject to fines of \$50 per person, per day, whenever the jail population exceeded the cap.

As of mid April 1993, the Harris County jail had 12,443 inmates, or 2,643 more than the 9,800 cap, and another 2,524 Harris County inmates were being held in jails in other counties. Of the total of 14,967 Harris County inmates, 8,574 were state prisoners awaiting transfer to state facilities. The state was assessed about \$3 million in fines for April for not meeting the population cap.

A court-ordered plan drafted by the parties in the *Alberti* case included proposals to expedite paperwork and add facilities for community corrections to relieve overcrowding. The final order in the *Alberti case* required the state to pay for the plan's community corrections proposals. From fiscal 1991 through April 1993, the state made \$14.1 million in payments to comply with court orders in the *Alberti* case.

Emergency prison appropriation. In SB 171 by Montford (effective February 23) the 73rd Legislature approved a \$250.8 million emergency appropriation for criminal justice. The Public Finance Authority was authorized to issue \$125 million in general obligation bonds for new prison facilities, and \$125.8 million was appropriated from the Economic Stabilization Fund to TDCJ for start-up costs and fiscal 1993 operation of some state jail beds, payments to counties for jail overcrowding, potential fines from the *Alberti* final court order, Harris County local community corrections program and the operation of an intermediate sanction facility in Harris County.

DIGEST:

CSSB 532 would establish a new state jail division of TDCJ to operate state jails for persons required by a judge to be confined in a state jail as a term of probation following conviction of a state jail felony. The bill also would authorize TDCJ's institutional division to operate transfer facilities to confine inmates for up to 18 months, make changes in the statutes governing community supervision and correction (probation) departments and the probation division of TDCJ, make changes in use of substance abuse treatment facilities and limit where parolees could reside.

The bill would appropriate \$72 million from the Economic Stabilization Fund (rainy day fund) to TDCJ to operate facilities and to supervise probationers.

CSSB 532 would take effect only if SB 1067 by Whitmire, also on today's calendar, is enacted.

State jail division. CSSB 532 would create a TDCJ state jail division to operate and manage state jails. The jails would be used for persons required by a judge to be confined in a state jail following conviction of any offense classified as a state jail felony. The division could finance and operate the facilities or contract with a private vendor or a commissioners court to finance or construct a state jail.

By October 1, 1993, the TDCJ board would have to adopt a timetable for use of state jails to meet the state's duty to accept felony inmates from county jails within 45 days of the completion of processing paperwork. The state jail implementation would have two parts. Phase one would

involve up to 70 percent of the total beds funded by the 73rd Legislature. The jail division would have to contract with the institutional division to construct, operate, maintain and manage phase one facilities.

The remaining 30 percent of the facilities (phase two) would be provided by the TDCJ board and either the state jail division or the Criminal Justice Assistance Division (CJAD), or both. The state jail division or CJAD would have to try to contract with private vendors or commissioners courts to construct phase two facilities and with private vendors, commissioners courts or community supervision and corrections departments to operate, maintain and manage phase two facilities. The state jail division would be authorized to enter into pilot programs with counties or community supervision and corrections departments for the operation of phase two facilities.

The TDCJ board could designate as a state jail any of its facilities or any community corrections facility that is an intermediate sanction facility. The Commission on Jail Standards would be required to give consultation and technical assistance to the state jail division relating to the construction and operation of the state jails.

The state jail division would be authorized to contract with the institutional division, private vendors, community supervision and corrections departments or a commissioners court to operate, maintain or manage a state jail. With the approval of the TDCJ board, the jail division or CJAD could make a grant to a community supervision and corrections department or a county for the construction, operation, maintenance or management of a state jail. A community supervision and corrections department or a county that received a grant could subcontract with a private vendor for any of the services.

Rules for work programs, rehabilitation, education and recreation in the state jails would be adopted by the TDCJ board. The jail division would be required to request the assistance of the community supervision and corrections departments and community justice assistance councils in developing the programs to be operated on a 90-day cycle.

At least nine regions for the state jails would be designated by the TDCJ board, which would have to attempt to place phase one facilities to serve the needs of the regions. The board would have to develop a regional allocation policy and an intra-regional bed allocation policy. The regions and the allocation policy would have to be adopted by October 1, 1993.

The State Board of Education would be required to establish a restricted certification for persons who would be eligible to teach in a public school if they had not been convicted of a crime. The person would be eligible to teach in state or local correctional facilities.

In addition to its current authority to contract with commissioners courts, the TDCJ board would be able to contract for criminal justice facilities with cities or non-profit corporations acting for cities. The facilities would no longer have to be managed by the institutional division of TDCJ.

The Public Finance Authority would be authorized to issue revenue bonds for correctional facilities built or run under contracts with private companies or commissioners courts or leased from cities.

Transfer facilities. TDCJ's institutional division (TDCJ-ID) would be authorized to operate and manage transfer facilities for persons in county jails awaiting transfer to state facilities for whom all paperwork and processing has been completed. The board could finance and construct transfer facilities or contract with private vendors or commissioners courts to finance, construct, operate, maintain or manage transfer facilities.

Inmates could not be confined for more than 18 months in transfer facilities. The TDCJ board would have to develop policies for accepting inmates from county jails into the transfer facilities and to move inmates from the facilities to the institutional division. TDCJ would be required to award good conduct time to persons in transfer facilities as if they were imprisoned in TDCJ.

The state jails could be designated as transfer facilities if this would not deny placement in a state jail to a person sentenced to one.

CJAD, probation programs. CSSB 532 would amend numerous parts of the Code of Criminal Procedure dealing with the Community Justice Assistance Division of TDCJ and local probation departments. The division would be authorized to develop standards and guidelines for community corrections facilities and state jail facilities.

CSSB 532 would define community correction facilities as those designed by a community justice council to confine defendants and provide restitution centers, residential treatment facilities, substance abuse treatment facilities, custody facilities, boot camps, facilities for offenders with mental impairments and intermediate sanction facilities.

"State aid" would be defined as appropriations to judicial districts for community supervision services; to judicial districts, counties, cities and nonprofit organization to develop or improve community corrections facilities and comply with board policies; and to counties for performance rewards.

CJAD. CJAD would have to propose, and the TDCJ board adopt, minimum standards for community corrections facilities, a list of core services that should be provided by community supervision and corrections departments and methods to evaluate their programs.

CJAD and the Criminal Justice Policy Council would be required to annually evaluate at least 10 percent of the state-funded community corrections facilities and state jail facilities to study levels of risk that inmates present to society.

Funding mechanism. CSSB 532 would change CJAD's funding mechanism for probation departments from a four-tiered system based on the workloads for persons under different levels of supervision to a per capita, per diem method based on an amount for felons directly supervised by the department. CSSB 532 would impose a 182 day limit on per capita, per diem funding for misdemeanants. Community corrections formula funding would be based on a new allocation formula based on the TDCJ admissions allocation formula.

CSSB 532 would expand the uses for CJAD discretionary grants. CJAD would no longer have to collect statistics on bail bonds and other types of pretrial releases.

CSSB 532 would eliminate the current program of performance rewards for diverting offenders from confinement and replace them with county incentive payments. CJAD would be required to make quarterly county incentive payments to counties with probation departments based on the county's percentage of state probationers. County's would have to provide a plan outlining the uses of the incentive payments and could not use less than 25 percent for substance abuse prevention and treatment programs. The minimum yearly grant would be \$10,000.

Probation, community corrections. Commissioners courts and counties could not enter into contracts or receive grants authorized by CSSB 532 unless they had consulted with local community justice assistance councils and the communities most recent community justice plan included the contract or grant.

Directors of community supervision and corrections departments would have to meet the eligibility requirement for probation officers. The bill would allow probation department employees to be governed by personnel policies and benefits at least equal to policies for county employees.

CSSB 532 would require community justice assistance plans to be submitted in odd-numbered years instead of annually and require state aid to be awarded biennially. The bill would revise the required contents of the community justice plans and require them to include use of state jails.

Community corrections and supervision departments would be authorized to operate programs and charge fees for deferred prosecution programs, pretrial bonding programs and other programs.

Probation departments would be able to establish developmental programs to help defendants obtain an education and job skills. The Department of Commerce would be required to provide information to probation departments and others about obtaining financial assistance through the Job-Training Partnership Act and other programs.

Probation departments would be able to assess administrative fees, not to exceed \$2, for transactions or administrative actions relating to the collection of money or the discharge of a sentence by a method other than the payment of money.

Community supervision and corrections departments, counties and cities, or a combination, would be authorized to establish community corrections facilities and would be encouraged to use abandoned or underutilized public facilities such as former military bases and rural hospitals. State approval would be necessary if the facility or property was to be purchased with state funds.

Judicial advisory council. Instead of serving at the will of the appointing judge, members of the judicial advisory council (six appointed by the chief justice of the Supreme Court and six by the presiding judge of the Court of Criminal Appeals) would serve staggered six-year terms with the terms of one-third of the members expiring in odd-numbered years.

Substance abuse treatment facilities. CSSB 532 would move the responsibility for the 12,000 beds in substance abuse felony facilities that TDCJ is required to provide for persons sentenced to substance-abuse felony punishments from CJAD and the pardons and paroles division to TDCJ generally.

The bill would eliminate current procedure for direct sentencing to substance abuse treatment facilities for certain felons convicted of felonies other than murder or a "3g" offense (capital murder, aggravated kidnapping, aggravated sexual assault or aggravated robbery). Instead, judges would be allowed to sentence probationers to the programs. (Currently, the penalty for persons convicted of a substance abuse felony is two to 10 years in prison and a maximum fine of \$10,000. The sentence is suspended, and the alternative penalty is confinement and treatment for six months to one year in a substance abuse treatment facility.)

To sentence a person to a substance abuse treatment facility, a judge would have to find that drugs or alcohol significantly contributed to the commission of the crime, the person met the criteria developed by the TDCJ board, that no other suitable community-based programs were

available, and that the ends of justice would be best served. Persons could also be sentenced to a substance abuse treatment facility after a modification of probation or parole.

CSSB 532 would repeal authorization for persons convicted of a driving while intoxicated felony to be sentenced to 30 days in a substance abuse facility. Probationers convicted of indecency with a child, sexual assault, aggravated sexual assault or solicitation of a child would not be eligible for assignment to a substance abuse treatment facility.

The TDCJ board would be authorized to adopt criteria to determine the suitability of persons for treatment in the substance abuse facilities, and TDCJ and the Texas Commission on Alcoholism and Drug Abuse together would develop screening and assessing for program participants. TDCJ would be required to separate those sent to the facilities as a condition of probation or parole and inmates of the prison system.

If a person treating an offender in a substance abuse treatment facility and a security official in the facility decided the defendant was not following the facility's rules or was medically or psychologically unsuitable for the program, they would be required to notify TDCJ. TDCJ would be required to return a defendant to county jail, ask the court to reassume custody, if the person was a probationer, or ask the pardons and parole division to assume custody, if the person had been sent as a condition of parole.

TDCJ would be responsible for transporting persons to the treatment facilities, instead of the counties as under current law.

In-prison therapeutic communities. CSSB 532 would remove the current requirement that some inmates be sent to three- and six-month in-prison therapeutic programs and instead allow programs of indeterminate length, up to 12 months. (Currently, TDCJ-ID is responsible for screening and inmates and transferring them to the programs.) Programs would have to be evaluated by the Criminal Justice Policy Council and TDCJ-ID.

TDCJ would be required to adopt procedures for deciding which inmates are the best candidates for the program and to give priority to those who volunteer. TDCJ would be required to end an inmate's participation in the

program if it was determined that the inmate was not complying with program rules.

After-care. Judges would have to require probationers sentenced to a substance abuse treatment facility to participate in an after-care program. Parole panels would have to require parolees confined to in-prison therapeutic communities to participate in after-care programs. TCADA would be required to contract for the transportation of persons to after-care programs. The Criminal Justice Policy Council, TCADA and TDCJ would have to evaluate the programs.

After-care would be a requirement for those who participate in in-prison therapeutic communities. TCADA would be required to develop the after-care treatment program.

Contracts for underutilized businesses The current requirement that TDCJ make a good faith effort to assist disadvantaged businesses receive at least 20 percent of construction contracts would be changed to a requirement to help "historically underutilized" businesses receive at least 30 percent of the construction and operation contracts.

Parole locations. Parole panels would have to require that parolees or persons released on mandatory supervision reside in the county they lived in when they committed their offense, or, if the parolee was not a Texas resident, in the county where the offense was committed.

Parole panels could require defendants to reside in other counties to protect the life or safety of a victim of the defendant, the defendant, a witness in the case or another person or to increase the likelihood of the defendant successfully completing parole. Parole panels would be able to modify decisions about where a parolee has to live.

Parolees allowed to live in a county other than their hometowns who became unemployed or were no longer enrolled in a program available in the county would be required to return to their hometown counties.

Indigent inmate's defense. Courts would be required to appoint an alternate attorney for an inmate if the court determined that a conflict of

interest would exist from the use of another appointed attorney. Counties would be required to pay the first \$250 in court-appointed attorney fees

Criminal Justice Policy Council. The Criminal Justice Policy Council would be required to determine monthly and report to the TDCJ board annually on parolees released in counties, releases to halfway houses and other statistics relating to parole. The first report would have to be made by January 1, 1994.

The policy council would no longer be required to recommend the goals, priorities and standards for the allocation of criminal justice planning funds and to implement the criminal justice data report. The policy council's annual report detailing the actions necessary to promote and effective and cohesive criminal justice system would be changed to a biannual report

Seal. TDCJ's institutional division would be required to use an official seal to certify certain documents received from counties when inmates are transferred to the division.

**SUPPORTERS
SAY:**

CSSB 532, coupled with the Penal Code revisions proposed in SB 1067, would implement a progressive, tough new approach to dealing with non-violent offenders and would reduce the backlog of state prisoners in county jails. The bill would offer more rehabilitation opportunities for non-violent offenders and force violent offenders to spend more time in prison. The two bills offer a realistic solution to many problems afflicting the criminal justice system.

CSSB 532 would support community corrections programs by allowing counties to have a role in the state jail system and ensuring that probation departments have the flexibility to meet the unique demands of their communities. The bill also would fine-tune the relatively new substance abuse felony programs and provide for a fairer system of determining where parolees would have to live.

State jail division. A system of state jails would allow non-violent offenders to spend time in a corrections facility offering rehabilitation and other programs, allow violent offenders to be confined longer in the state

prison system and relieve the county backlog of state prisoners. Money would be better spent on state jails than on fines or payments to counties.

About \$428 million in bonds would be used to construct 22,000 state jail beds to be completed by early 1995. About \$900 million in bonds would be used through fiscal 1998 to build an additional 42,000 state jail beds. The \$72 million appropriation in CSSB 532 would be used to operate the state jail beds in the current biennium and to supplement probation program funding.

It is sound fiscal policy to use money borrowed by issuing bonds to finance capital investments such as prisons that will be used over a long period. The "rainy day fund," the state's savings account, is an appropriate source of revenue for a crucial criminal justice expenditure, which constitutes a real emergency need.

The state jail system would allow non-violent offenders such as hot check writers to go to the jails, leaving room for violent offenders like murderers and rapists to spend more time in prison. CSSB 532 would help close the prison system's revolving door that releases offenders after serving just months of a multi-year sentence.

State jail felonies would allow the state to rapidly reduce the county backlog to meet its duty to accept state inmates from county jails as of September 1, 1995. By the end of 1995 the backlog of state inmates in county jails could be reduced to at least 8,700 and by the year 2000 the backlog could be reduced to 2,700, according to one estimate.

State jails could provide programs such as drug and alcohol treatment and education not available to inmates in county jails. Inmates would most likely receive better medical and social services in state jails than in most county jails. The state jail facilities are being planned to meet or exceed many constitutional requirements for prisons. Because of the possibility of lawsuits, the state would be careful to ensure constitutional care in the facilities.

CSSB 532 would allow judges to sentence persons to state jails as a condition of probation for conviction of a state jail felony. Judges would

be able to send persons to the state jails for one to two years, with no good time, during a probation term. This would give judges needed flexibility to design a probation program to fit an offender and to alter the program to meet the needs of an offender. State jails would form part of a continuum of sanctions available to courts, including probation, community corrections facilities, state jails, substance abuse facilities and prison.

The state jails would be cheaper to build and operate than standard prisons. While it costs about \$49 a day to house an inmate in a maximum-security facility, it would cost about \$27 a day in a state jail; it costs about \$24 million a year to operate a prison and could cost about \$19.8 million a year to operate a state jail.

The state jail beds would not violate the *Ruiz* settlement agreement. The beds would be run by a different division than the one that runs the prison system and persons would not be statutorily sentenced to prison but instead would be confined in the jails as a part of probation. There would be strict time limits on the time an inmate could spend in a state jail. Because the state jails would be used for short sentences and different offenses, they would not be in the same class as prisons subject to *Ruiz* standards.

By allowing counties, community supervision and corrections departments or commissioners courts to operate some state jail facilities, CSSB 532 would further the goal of community involvement in corrections. Counties could then have flexibility to design their own innovative corrections programs, something Travis County has proposed.

By requiring that the TDCJ board and the jail division or CJAD try to involve community supervision and corrections department, commissioners courts and other in providing at least 30 percent of the state jail beds, CSSB 532 would support community corrections efforts. CSSB 532 requires input from numerous entities into the operations and management of state jails. While the state jail division would coordinate the process, the advisory committee on community supervision and corrections department management, community supervision and corrections departments and community justice councils are just some of the groups that would be involved in the state jails.

Transfer facilities. The transfer facilities are needed to relieve the backlog of state prisoners in county jails and to prevent the state from paying massive court fines. About 19,800 state prisoners are being held in county jails awaiting transfer to state prisons when prison space allows. The transfer facilities would be used for short-term housing when inmates are awaiting admittance to TDCJ. CSSB 532 would prohibit inmates from being held in a transfer facility for more than 18 months, ensuring that they would be used as short-term, transfer facilities and not fall under *Ruiz* requirements.

In response to the *Alberti* final court order, the 73rd Legislature provided funding for transfer facilities. SB 171 by Montford appropriated \$125 million to pay for building five 2,000 transfer-bed facilities and \$23.3 million for start-up and fiscal 1993 operation of the transfer beds.

The Legislature has already had to appropriate \$71.9 million in continued payments to the counties to meet state obligations and \$18.6 million for *Alberti* fines. If the state acts in good faith to solve some of the jail overcrowding problems, the fines could be reduced. Because the state failed to meet an April 1 deadline for a cap on the Harris County jail population, about \$3 million in fines were assessed for April. The fines could total more than \$40 million this fiscal year and more than \$400 million during the fiscal 1994-95 biennium.

CJAD, probation programs. CSSB 532 would mark another step in the state's emphasis on community corrections. The bill would allow CJAD funding and operations to become more result-orientated, allow CJAD to set broad guidelines for facilities and allow the division to have oversight of probation programs while giving the localities the flexibility to develop programs for their unique situations. The bill would allow more support for and emphasis on probation, boot camps and electronic monitoring for non-violent

Changing the CJAD funding mechanism would allow funding to be based the number of persons supervised and eliminate current incentives to represent workloads in certain ways to generate more funding. CSSB 532 simplifies the performance reward program, which has proved unwieldy, by replacing it with a county incentive program that would encourage counties

to divert inmates into alternative programs that work for each unique county. Allowing community justice assistance plans to be developed and funded for two years would enhance long-range planning.

Allowing the TDCJ board to convert facilities would give the department maximum flexibility to deal with facilities that are funded by state monies.

Substance abuse treatment facilities. Moving the responsibility for substance abuse treatment facilities to TDCJ instead of allocating it to two TDCJ divisions would recognize that running these facilities requires the efforts and cooperation of the entire department. Currently, about 1,600 persons are in facilities for primary treatment, and by August 31 about 2,600 beds will be available. About 300 persons have been paroled to after-care programs.

Directly sentencing persons to substance abuse treatment facilities has raised questions about the status of persons sentenced directly to the facilities and whether they are technically inmates, probationers or some other classification. In order for a person sent to a substance abuse facility to serve the prison sentence originally imposed, the court must first impose probation (thereby suspending the prison sentence), then *revoke* the probation, triggering the two- to 10-year prison term. The potential confusion and ensuing waste of time could cause some overburdened courts to lose jurisdiction over these persons, which could lead to some felons unintentionally slipping out of from judicial jurisdiction.

By eliminating the special, abbreviated 30-day driving while intoxicated sentence in a substance abuse treatment facility, CSSB 532 would treat DWI felons the same as other felons, making them eligible for the standard three- and six-month programs. By eliminating length requirements for in-prison therapeutic communities, CSSB 532 would give TDCJ more flexibility to design effective programs.

Underutilized businesses. CSSB 532 would give historically underutilized businesses (HUBs) a chance to participate in an increased portion of the construction and in the operation of corrections facilities by requiring the state to make a good faith effort to include them. A "good faith effort"

opens doors that heretofore may be closed without tying the hands of the board to a 30 percent quota.

Including HUBs in the transaction of state business is not a new concept. Gov. Richards, in executive order AWR-93 (March 24, 1993), directed all state agencies to maximize contract opportunities for women-owned and minority-owned businesses. The TDCJ board is currently required under the Government Code to make a good faith effort to include disadvantaged businesses in at least 20 percent of all construction contracts. The definition of "historically underutilized business" is broader than "minority-owned business," and it will be easier to satisfy the good faith effort requirement.

Parole locations. Returning parolees to their hometowns would ensure that some counties do not receive an unfair portion of TDCJ parolees. Currently, about 50 percent of parolees are sent to Harris, Dallas and Tarrant counties. In 1992 Harris County received about 1,000 more parolees than the number of offenders it sent to prisons, according to one estimate. Statistics show that parolees commit about three major crimes a year, so reducing the number of parolees to a county could help reduce the county crime rate for some counties that have received more than their fair share of parolees.

CSSB 532 would provide guidelines for parole decisions but would allow for exceptions, such as if a treatment program was not available in the inmate's home county or if the inmate had a job in another county. This would give the parole board needed flexibility in making parole decisions but also ensure that decisions are based on some rational, fair guidelines.

**OPPONENTS
SAY:**

CSSB 532 would continue the emphasis on bricks, mortar and residential facilities at the expense of putting the state's resources into non-residential corrections programs such as electronic monitoring and intensive supervision and community-based residential facilities. The state's money would be better spent on encouraging the use of local sanctions for communities to deal with non-violent offenders instead of relying on state facilities. It makes little sense to continue to lock up nonviolent offenders — whether in a state jail or a prison.

State jail division. The state is setting itself up for yet another lawsuit if it builds and operates what are really prisons under different standards than ordered by the court in the *Ruiz* final judgment. If offenders are spending *more* time in state jails than they currently do in county jails or prisons, the jails could be viewed by the courts as part of the prison system, and subject to *Ruiz* requirements. While CSSB 532 does create a new division to run the jails, the division is required to involve the institutional division — which operates the prisons. This could result in de facto operation by the institutional division.

By *requiring* the institutional division to be involved in phase one state jail beds, CSSB 532 places too much emphasis on a state system of jails and not enough on local, community corrections. The state should be building up the community corrections system instead of creating a state jail system.

CSSB 532 contains inadequate direction and standards for the state jails, and the authority and responsibility for the jails would be confusing. The bill would give the state jail division too much responsibility for developing and overseeing the jails. The Commission on Jail Standards or some other body independent of TDCJ should have formal input into the building and operation of the jails. The two-year limit on confinement in state jails is too long. The facilities should be used for short-term stays such as three or six months.

The building program started by CSSB 532 would do nothing to stop the massive and expensive growth of the corrections system; every facility carries with it the need for future tax dollars to operate it. The construction and operation of the prison system may soon bankrupt the state. It is estimated that it will cost about \$19.8 million a year to operate a 2,000-bed state jail.

No amount of construction will ever meet the potential demand for prison space — as more beds are added, more prisoners will be sentenced to fill them. Building facilities for offenders is a short-term approach to a problem that can only be solved through long-term changes in public policy and society.

The state should not go into debt to pay for expanding corrections facilities, especially when there are other, pressing needs such as public education that are under funded. Construction of the transfer facilities and the state jails together would cost the state about \$550 million in bonds in the 1994-95 biennium alone and another \$900 million in bonds for additional state jail beds through fiscal 1998, and about twice that much over the life of the 20-year bonds. This simply pushes the debt off on future generations.

CSSB 532 would wipe out the rainy day fund for the biennium. The fund will have about \$197 million by the end of the biennium, and the 73rd Legislature has already appropriated \$125.8 million from the fund to operate corrections facilities and make payments to counties. The rainy day fund should be held in reserve for spending when state *revenue* drops unexpectedly, not for expenditures that should be planned for and funded through the general appropriations process.

Transfer facilities. Building transfer facilities would add yet another unnecessary element to the mix of correctional facilities and could be seen by the courts as an effort to circumvent *Ruiz* requirements. If the offenders in the transfer facilities are destined for prisons, the state should not try to house them in other facilities.

CSSB 532 contains inadequate direction and standards for the transfer facilities. The bill should specify that an entity independent of TDCJ has some formal input into standards for the transfer facilities.

CJAD, probation programs. Many of the provisions of CSSB 532 are unclear about the authority and responsibility of CJAD in relation to the state jails. For example, the bill would authorize CJAD to fund their development but would not give the division any authority to develop standards or guidelines, divorcing CJAD from authority for determining if they are effectively run. District judges are given authority to expend money provided by CJAD for state jails, but CJAD has not received any appropriation for the facilities.

CSSB 532 should not authorize the TDCJ board to convert intermediate sanction facilities into state jails. This would remove local control of the facilities and jeopardize their existence.

Substance abuse treatment facilities. Moving responsibility for substance abuse treatment facilities to TDCJ could allow the programs to become lost among the numerous programs and responsibilities of the department and allow everyone to escape accountability. Requiring CJAD and the pardons and parole division to run the programs properly places the emphasis of the programs on probationers and parolees.

Underutilized businesses. Requiring an increased reliance on the use of historically underutilized businesses and adding operation contracts to the requirements could impede the construction and opening of facilities.

Parole locations. CSSB 532 could unnecessarily restrict parole panels that generally take into consideration the factors outlined in CSSB 532 already. The panels need the maximum flexibility in deciding where to parole persons and should not have statutory restrictions. Some parolees may prefer to be paroled to a county other than the one in which they committed their offense, to look for a job or live with relatives.

OTHER
OPPONENTS
SAY:

CSSB 532 would set out an ambitious plan for state jails and community corrections without any assurance that they will be adequately funded.

NOTES:

The committee substitute made numerous changes in the original bill. Among these were provisions giving CJAD a role in development of phase two state jail beds; changing the role of the institutional division in the development of phase one facilities from *not less than 70 percent* to *not more than 70 percent*; eliminating a requirement that the Commission on Jail Standards set standards for the state jails, adding numerous sections dealing with CJAD and probation departments; adding the sections dealing with substance abuse treatment facilities and in-prison therapeutic communities; adding requirements for the use of historically underutilized businesses; requiring persons to be paroled to certain counties; and adding guidelines for dealing with court-appointed attorney conflicts of interests.

Also on today's calendar are:

- SB 1067 by Whitmire, revising the Penal Code, including creating the state jail felonies;

- SJR 45 by Whitmire, proposing a Constitutional amendment to authorize the issuance of up to \$1 billion in general obligation bonds to acquire, construct or equip new corrections institutions, including youth corrections institutions and to repair or renovate facilities;

SB 1068 by Whitmire, authorizing issuance of up to \$1 billion in general obligation bonds and the distribution of bond proceeds to acquire, construct or equip new corrections facilities or for major repair renovation of existing facilities.

On April 29 the House passed HB 2305 by Place, which contained the provisions relating to substance abuse treatment facilities and in-prison therapeutic communities found in CSSB 532. HB 2305 has been referred to the Senate Criminal Justice Committee.